

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 2, 2003 Session

**GEORGE R. PHILLIPS v. PAUL H. SKELTON, JR.**

**Appeal from the Chancery Court for Hawkins County**  
**No. 14746     Thomas R. Frierson, II, Chancellor**

**FILED SEPTEMBER 23, 2003**

**No. E2002-02681-COA-R3-CV**

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When Joseph Housewright died in 1898, his seven children orally agreed to a division of their father's real property. No deeds were executed to memorialize their agreement. Some 103 years later, George R. Phillips, a great-grandson of Housewright, sued Paul H. Skelton, Jr. – who is not a descendent of Housewright – claiming that Skelton was interfering with Phillips' quiet possession of his fee simple ownership of 9.96 acres of land in Hawkins County, an interest Phillips claims is traceable to Housewright's estate. Skelton answered and filed a counterclaim, in which he alleged that he, along with others – not including Phillips – owned the subject property. The trial court found that the property belonged to Phillips. Skelton appeals, arguing that the trial court erred (1) in holding that Phillips, rather than Skelton, "holds valid assurance and color of title to the subject real property" and (2) in holding that Skelton failed to establish a defensible title to the property. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, J., joined. HOUSTON M. GODDARD, P.J., not participating.

Terry Risner, Mt. Carmel, Tennessee, for the appellant, Paul H. Skelton.

Douglas T. Jenkins, Rogersville, Tennessee, for the appellee, George R. Phillips.

**OPINION**

**I.**

Joseph Housewright died intestate in 1898, leaving seven children surviving. The children orally partitioned their father's real property. Mrs. Jenny Phillips, née Housewright, one of Joseph Housewright's daughters, thereafter claimed and occupied her share of the orally partitioned property.

Jenny Housewright Phillips was the third wife of Jacob Phillips. Jacob Phillips died intestate in 1917. Jenny Housewright Phillips died in 1934, leaving her real property to her two children, David Robert Phillips and Iva Pearl Phillips, the father and aunt of the plaintiff George R. Phillips. David Robert Phillips died in 1979. His sister died in 1983. Both left their real property to the plaintiff George R. Phillips. The most recent fee simple deed known to exist covering the disputed property is dated 1879. In that deed, Joseph Housewright is the grantee of a tract of land that includes the tract claimed by Jenny Housewright Phillips after her father's death. The plaintiff George R. Phillips or his predecessors in title had paid all property taxes due on the property since 1936 up until shortly before the filing of the instant action. In 1982, the plaintiff George R. Phillips and his aunt, Iva Pearl Phillips, conveyed a utility easement over the property in dispute to the Tennessee Valley Authority.

The defendant, Paul H. Skelton, Jr., resides on a tract of land, approximately one acre in size, that abuts the disputed 9.96 acres. His wife and son have title to this adjoining one-acre tract, which was purchased from Skelton's brother. The brother had received the property by bequest from his parents, Hubert Skelton and Mayme Skelton.<sup>1</sup> The one-acre tract was once part of the tract owned by Jenny Housewright Phillips by virtue of the previously mentioned oral partition. Hubert Skelton and Mayme Skelton took title to the one-acre tract from David Robert Phillips and Iva Pearl Phillips by a deed reciting that the grantors received their title by inheritance from "Jennie Phillips." This apparently is a reference to Jenny Housewright Phillips.

The defendant Paul H. Skelton, Jr., is a descendent of Jacob Phillips, the aforementioned husband of Jenny Housewright Phillips. He claims ownership to the property in question by virtue of inheritance through the line of Jacob Phillips. Skelton claims that Jacob Phillips owned the subject property at the time of his death.

Since Iva Pearl Phillips' death in 1983, George R. Phillips has neither resided upon nor visited, with any frequency, the property in dispute. Paul H. Skelton, Jr., testified that he has mowed the yard with some frequency since that date, although the house on the property collapsed subsequent to Iva Pearl Phillips' death. Skelton also testified that he hunts on the land. The plaintiff George R. Phillips testified that, some six or seven years prior to his filing suit, Skelton asked permission to remove a fence between the 9.96 acre tract and the approximately one-acre tract on which Skelton resides.<sup>2</sup>

The plaintiff George R. Phillips testified that just prior to his filing of the instant action, Skelton paid the most recent property tax due for the disputed tract and had been talking to others regarding the property as if he owned it. The plaintiff George R. Phillips initiated this suit in

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<sup>1</sup>Hubert Skelton and Mayme Skelton are also the parents of the defendant, Paul H. Skelton, Jr.

<sup>2</sup>Apparently, the 9.96 acre tract and the one acre tract make up the property orally partitioned to Jenny Housewright Phillips following the death of her father.

response to Skelton's attempt to assert dominion over the disputed property. As mentioned, the trial court found that the plaintiff George R. Phillips is the owner of the disputed property.

## II.

Skelton contends that the trial court erred (1) in holding that Phillips possesses valid title to the disputed real property and (2) in holding that Skelton lacked any legitimate claim to title for the same property.

## III.

Our review of this non-jury case is *de novo* upon the record developed below with a presumption of correctness as to the trial court's factual findings, "unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). The trial court's conclusions of law are not accorded the same deference. *Brumit v. Brumit*, 948 S.W.2d 739, 740 (Tenn. Ct. App. 1997). Our *de novo* review is also subject to the well-established principle that the trial court is in the best position to assess the credibility of the witnesses; accordingly, such determinations are entitled to great weight on appeal. *Massengale v. Massengale*, 915 S.W.2d 818, 819 (Tenn. Ct. App. 1995).

Whether or not the elements of adverse possession have been satisfied presents a factual inquiry. *Landworks, Inc. v. Vick*, No. E2001-00615-COA-R3-CV, 2002 WL 236690, at \*9 (Tenn. Ct. App. E.S., filed February 19, 2002).

## IV.

The trial court filed an excellent, exhaustive, and well-reasoned memorandum opinion addressing the issues now before us. Because we hold that the evidence does not preponderate against the trial court's findings of fact and because we have determined that the trial court reached the correct conclusions of law, we adopt, as our own, the trial court's memorandum opinion, which is attached to this opinion as an appendix and incorporated herein by reference as fully as if set forth herein verbatim.

## V.

The judgment of the trial court is affirmed. Costs on appeal are taxed to Paul H. Skelton, Jr. This case is remanded to the trial court for enforcement of that court's judgment and for collection of costs assessed below, all pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE